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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0074: Sequence 44]

Federal Acquisition Regulation;

Submission for OMB Review; Contract Funding - Limitation of

Costs/Funds

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension of an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning limitation of costs/funds. A notice was published in the Federal Register at 77 FR 75163, on December 19, 2012. Two comments were received.

DATES: Submit comments on or before [Insert date 30 days after publication in the Federal Register.]

ADDRESSES: Submit comments identified by **Information Collection 9000-0074, Contract Funding - Limitation of Costs/Funds** by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0074, Contract Funding - Limitation of Costs/Funds". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0074, Contract Funding - Limitation of Costs/Funds" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, 2nd Notice, Washington, DC 20405-0001. ATTN: Hada Flowers/IC 9000-0074, Contract Funding - Limitation of Costs/Funds.

Instructions: Please submit comments only and cite Information Collection 9000-0074, Contract Funding - Limitation of Costs/Funds, in all correspondence related to this collection. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA (202) 501-3221 or email Edward.chambers@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal cost-reimbursement contracts are required to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or

(2) The total cost for the performance of the contracts will be greater or substantially less than estimated.

As a part of the notification, the contractors must provide a revised estimate of total cost.

B. Discussion and Analysis.

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of these public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval of an existing information collection. The PRA requires that agencies use the Federal Register notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to FAR clauses 52.232-20 and 52.232-22. These clauses require contractors performing under Federal cost-reimbursement contracts to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or

(2) The total cost for the performance of the contracts will be greater or substantially less than estimated. As a part of the notification, the contractors must provide a revised estimate of total cost.

These notifications assist the Government in its effort to provide timely funding of cost reimbursement contracts. The lack of such notifications increases the risk that funding may lapse, resulting in contract work stoppages. This clause has existed substantially the same since the inception of the FAR.

Comment: The respondent commented that the agency did not accurately estimate the public burden, challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. First, the respondent questioned the basis for the estimated number of respondents of 3,598, stating that it appears to be understated. The respondent also questioned the basis for the estimate of 15.96999 responses per respondent, stating that the five decimal places imply a precise calculation underlying the estimate. Finally, the respondent stated that the average burden estimate of 0.5 hours per response is unrealistically low and unsubstantiated. For this reason, the respondent contends that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007-006. The same respondent also provided that the burden of compliance with the information collection requirement outweighs any potential utility of the extension.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007-006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that

would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection, and although the respondent provided estimates of responses and burden hours, the estimates cannot be confirmed with any degree of certainty to totally rely on the information. However, it is determined that an upward adjustment is warranted at this time based upon consideration of the information provided in the public comment. The information collection requirement has been

revised to reflect an overall increase in the total public burden hours.

The estimates of the number of respondents and the number of responses per respondent are based on data from the Federal Procurement Data System-Next Generation (FPDS-NG) for Fiscal Year (FY) 2011. For FY 2011 there were 3,598 unique vendors with 57,460 funding only actions under cost reimbursement contracts. These funding actions are usually the result of the notification required by this information requirement. The number of responses per respondent (15.96999) was derived by dividing the number of actions by the number of unique vendors. The preciseness of the number of responses demonstrates the level of review and the serious consideration given to the data gathered for this information collection. However, in response to the public comment received, the number of responses per respondent has been rounded up to 16.

With regard to the estimate of 0.5 hours per response, we believe that the notification typically involves an observation of the contractors accounting and financial reporting system that available funds will fall below the 75 percent threshold within the next 60 days, followed by a very brief letter to the contracting officer referencing the applicable contract clause at FAR 52.232-20 or FAR 52.232-22. The contractor's responsibility to foresee the availability of funds and probable

cost overruns carries with it a duty to maintain an accounting and financial reporting system capable of securing timely knowledge of all probable costs before they are incurred. This information collection does not require contractors to create or maintain any record or system that the contractor does not maintain in its ordinary course of business. Therefore, the estimated burden hour per response of 30 minutes for this collection of information is valid. However, the rounding of the annual number of responses per respondent from 15.96999 to 16, based upon consideration of the information provided by the respondent, resulted in a revision to the information collection requirement to reflect an overall increase in the total public burden hours.

C. Annual Reporting Burden

Respondents: 3,598.

Responses Per Respondent: 16.

Annual Responses: 57,568.

Hours Per Response: .500.

Total Burden Hours: 28,784.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, 2nd Floor, Washington, DC 20417, telephone (202) 501-4755.

Please cite OMB Control No. 9000-0074, Contract Funding -
Limitation of Costs/Funds, in all correspondence.

Dated: July 15, 2013.

Karlos Morgan,
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